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Intergovernmental Group of Experts on
Restrictive Business Practices
Eleventh session
Geneva, 23 November 1992
Item 2 of the provisional agenda

ADOPTION OF THE AGENDA AND ORGANIZATION OF WORK

Provisional agenda and annotations

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   (b) Information and consultations on restrictive business practices;

   (c) The model law or laws for the control of restrictive business practices, and the Handbook on Restrictive Business Practices Legislation;

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II. ANNOTATIONS TO THE PROVISIONAL AGENDA

Item 1: Election of officers

In accordance with rules 18 and 19 of the Rules of Procedure of the Main Committees of the Board[1/], the Bureau of the Intergovernmental Group of Experts on Restrictive Business Practices shall consist of seven members, including four members from lists A and C combined, two from list B and one from list D, referred to in the annex to General Assembly resolution 1995 (XIX) as amended. In keeping with the cycle of rotation for the election of Chairman and Rapporteur, the Chairman at the eleventh session of the Intergovernmental Group of Experts (the fourth of a seven-session cycle) shall be a representative of one of the States members of list A (Asia) and the Rapporteur a representative of one of the States members of list B. Three Vice-Chairmen shall be elected from lists A and C combined, one from list B and one from list D.

Item 2: Adoption of the agenda and organization of work

The provisional agenda for the eleventh session was approved at the closing plenary meeting of the Intergovernmental Group of Experts on its tenth session, on 25 October 1991.[2/]

Concerning the organization of the work of the session, the Group has five working days available. It is therefore suggested that the first meeting, on 23 November, be devoted to procedural matters (items 1 and 2) and to introductory statements. The last meeting, on 27 November, would be devoted to item 6 (provisional agenda for the twelfth session of the Intergovernmental Group of Experts), item 7 (other business) and item 8 (adoption of the report of the Intergovernmental Group of Experts).

The afternoon of Thursday, 26 November would need to be kept free for the preparation of the draft report. The remaining meetings (i.e. from the afternoon of 23 November to the morning of 26 November) would be devoted to the substantive items on the agenda (items 3 to 5).

Item 3: Review of the operation of and experience arising from the application and implementation of the Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices

In this connection, it should be noted that UNCTAD VIII, which took place in Cartagena (Colombia) in February 1992, agreed, inter alia, "that UNCTAD should pursue, through the Intergovernmental Group of Experts on Restrictive Business Practices, its work with regard to policies and rules for the control of restrictive business practices in order to encourage competition, to promote the proper functioning of markets and efficient resource allocation, and to bring about further liberalization of international trade". It also agreed that "Efforts should be made by national

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1/ The rules of procedure of the Main Committees are contained in document TD/B/740.

2/ Paragraph 93 of the report of the Intergovernmental Group of Experts on Restrictive Business Practices on its tenth session (TD/B/1310- TD/B/RBP/85).

Governments or regional authorities to implement fully the provisions of the Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices and to develop cooperation between national competition authorities, including competent authorities of regional groupings".3/

Under this item, the Intergovernmental Group of Experts will have before it a note by the UNCTAD secretariat (TD/B/RBP/89) containing extracts of the replies from States to the note of the Secretary-General of UNCTAD (TD/420/8 (6) of 13 April 1992), requesting information on the steps taken by States, at the national or regional levels, to meet their commitment to the Set of Principles and Rules.

Item 4: Activities relating to specific provisions of the Set:

(a) Studies on RBPs related to the provisions of the Set of Principles and Rules;
(b) Information and consultations on restrictive business practices;
(c) The model law or laws for the control of restrictive business practices, and the Handbook on Restrictive Business Practices Legislation;
(d) Technical assistance, advisory and training programmes on restrictive business practices;

(a) Studies on RBPs related to the provisions of the Set of Principles and Rules

At its tenth session, the Intergovernmental Group of Experts on Restrictive Business Practices welcomed the UNCTAD secretariat's study on "Concentration of market power through mergers, takeovers, joint ventures and other acquisitions of control, whether of a horizontal, vertical or conglomerate nature, and its effects on international markets" (document TD/B/RBP/80) and requested the UNCTAD secretariat to finalize a further draft of the study, taking into account the comments made at the tenth session of the Intergovernmental Group of Experts and written comments to be submitted by member States by the end of January 1992 (Agreed conclusions, paragraph 2).4/

Accordingly, the UNCTAD secretariat has revised the study and the Intergovernmental Group of Experts will have before it a revised version of the "Concentration of market power" study (TD/B/RBP/80/Rev.1) for consideration.

In addition, the Intergovernmental Group requested the UNCTAD secretariat to prepare an annotated outline of a possible study on "Competition policy issues related to industrialization in developing

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3/ UNCTAD, Eighth session, "A New Partnership for Development: The Cartagena Commitment", para.147, TD (VIII)/Misc.4 0127E, of 27 February 1992.

4/ Agreed conclusions, adopted by the Intergovernmental Group of Experts at its tenth session, annex I to the report of the session, op cit.

countries" (Agreed conclusions, paragraph 3). The annotated outline, which is contained in Part I of the UNCTAD secretariat note on "Activities relating to specific provisions of the Set (document TD/B/RBP/90), will be before the Intergovernmental Group of Experts for consideration.

(b) Information and consultations on restrictive business practices

The Second United Nations Conference to Review all Aspects of the Set[5/] in 1990 requested the Secretary-General of UNCTAD to issue and regularly update a directory of restrictive business practices control authorities and to prepare an indicative checklist for requests for information, as well as a checklist of possible steps which countries may wish to follow in the preparation of a case, and in their request for consultations.

The Intergovernmental Group of Experts at its tenth session considered the UNCTAD secretariat's proposed indicative checklists (TD/B/RBP/78) and considered that the checklists could benefit from simplification in order to enhance their practical application. It requested the UNCTAD secretariat to revise the checklists accordingly. The revised checklists, as well as the directory of restrictive business practices control authorities, are contained in TD/B/RBP/78/Rev.1.

In addition, under this item of the agenda - as has become customary at each session of the Intergovernmental Group of Experts - States are invited to undertake, during the session, multilateral or bilateral consultations on issues concerning control of restrictive business practices. The Inter-governmental Group of Experts on Restrictive Business Practices, at its tenth session, welcomed the multilateral and bilateral consultations and the exchange of views among competition experts that took place during that session. These had provided a useful forum for consideration of particular competition issues and had served to establish additional important contacts between experts from several countries. The Intergovernmental Group therefore requested the UNCTAD secretariat to continue to facilitate these consultations. Accordingly, the secretariat will provide the facilities necessary for such consultations upon request.

In this connection, member countries of OECD have suggested the following two topics for multilateral consultations:

(a) "Deregulatory issues, including the appropriate regulation of natural monopolies;"

(b) "The rights of defendants in competition investigations and proceedings".

The United States has volunteered to make a presentation on the first topic and France on the second. Other States are invited to make presentations on these or other subjects they may wish to discuss during the session. It is recalled that, as decided by the Second Review Conference, topics should be selected in advance of each session and time made available for the discussions (Resolution adopted by the Review Conference, paragraph 9).

5/ Report of the Conference (TD/RBP/CONF/3/9).

(c) The model law or laws for the control of restrictive business practices, and the Handbook on Restrictive Business Practices Legislation;

At its tenth session, the Intergovernmental Group of Experts had welcomed the work done by the UNCTAD secretariat on a revised draft of possible elements for articles of a model law or laws (document TD/B/RBP/81), and requested the UNCTAD secretariat to prepare a further draft of the paper, taking into account the comments made at the tenth session and written comments to be transmitted by the end of January 1992. On the basis of these comments, the UNCTAD secretariat has prepared a further draft of the model law or laws (TD/B/RBP/81/Rev.1).

In addition, as requested by the Intergovernmental Group of Experts on its tenth session (agreed conclusions, paragraph 5), the UNCTAD secretariat has prepared a further compilation of the Handbook on Restrictive Business Practices Legislation (TD/B/RBP/87).

(d) Technical assistance, advisory and training programmes on restrictive business practices

In line with the Set of Principles and Rules and paragraphs 10-16 of the resolution adopted by the Second Review Conference, the UNCTAD secretariat has continued its efforts to provide technical assistance, advisory and training programmes on restrictive business practices to developing countries.

It is important to note, in this respect, that the eighth session of UNCTAD, in Cartagena, agreed that "the UNCTAD secretariat and developed countries should provide, upon request and within available resources, developing countries and other countries with technical assistance in the area of competition policy".6/ A progress report on these activities will be submitted to the Intergovernmental Group of Experts in Part II of its note on "Activities" (TD/B/RBP/90).

Item 5: Work programme on restrictive business practices

Under this item, the Intergovernmental Group of Experts is expected to give guidance to the UNCTAD secretariat as to the further work it is requested to undertake.

In this connection, the Intergovernmental Group of Experts on Restrictive Business Practices should bear in mind the agreement reached during UNCTAD VIII that "UNCTAD should pursue, through the Intergovernmental Group of Experts on Restrictive Business Practices, its work with regard to policies and rules for the control of restrictive business practices, in order to encourage competition, to promote the proper functioning of markets and efficient resource allocation, and to bring about further liberalization of international trade".7/

6/ UNCTAD VIII: The Cartagena Commitment, op.cit., paragraph 148.

7/ Ibid., paragraph 147.

Item 6: Provisional agenda for the twelfth session of the Intergovernmental Group of Experts

During the session, the UNCTAD secretariat will submit a draft provisional agenda for the twelfth session of the Intergovernmental Group of Experts, the dates of which are tentatively set for 29 November to 3 December 1993.

Item 7: Adoption of the report of the Intergovernmental Group of Experts

Trade and Development Board resolution 228 (XXII) provides that the Group shall submit reports on its work at least once a year to the Board.